

REMARKS

Applicants are presenting this paper as a submission filed under the RCE process (37 CFR 1.114). It is the intent of the applicants to continue the prosecution of the currently pending "parent" application USSN 10/622,386, which is currently subject to a Final Rejection mailed September 19, 2005. The present submission is accompanied by Form PTO/SB/30 entitled "Request for Continued Examination (RCE) Transmittal" as well as a check in an amount that covers the RCE fee and the appropriate small entity fee for a two-month extension of time (applicants have previously claimed SMALL ENTITY status).

In the Examiner's Final Rejection mailed September 19, 2005, various objections and rejections were made:

Objection to claim 23 was raised because the claim ended in a comma. By this submission, the comma has been changed to a period and the objection should be withdrawn.

Claims 1-14 and 22-23 were rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement, and in particular claims 1 and 23 were said to have been amended to include a "gate member pivotably attached to a portion of the base", when in fact (as pointed out by the Examiner) the rear gate G of the basket is pivotally mounted on the first horizontal transverse member 162". By this amendment, claim 1 has been changed to recite that the gate member is "pivotably attached to a handle assembly mounted to said base rearwardly of said container", and the claims are believed to have now properly define the relationship between the rear gate and the handle member. Accordingly, withdrawal of the rejection under 35 USC 112, first paragraph, is respectfully solicited.

Claims 11, 15-21 and 23 were rejected under 35 USC 112, second paragraph, as being replete with functional and indefinite language, i.e., as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner noted that the recitation of "conventional" shopping carts was considered "not of proper scope" inasmuch as the Examiner felt "conventional" shopping carts were not positively recited "leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the 'conventional shopping cart'". The Examiner further noted that the use of quotes around the word "conventional" added to the indefiniteness. The amendments presented above

seek to cure any indefiniteness in claim 11 that arose as a result of the use of the word "conventional".

No change has been made to claim 15, with the result that claims 15-21 and 23 still contain the language found to be objectionable by the Examiner. Applicants still believe this rejection is without foundation. The specification clearly defines a conventional shopping cart" with not only drawing figures but also a detailed description of such "conventional shopping cart". Further, there is ample evidence in the published records of the US Patent Office that describing an object as "conventional" is clearly permitted. As of June 22, 2005, the US Patent and Trademark Office had issued over 20,000 US patents in which one or more claims in each of the patents contained the word "conventional", and several US patents of that collection of 20,000 specifically pertain to shopping carts and contain claims in which "conventional shopping carts" have been recited, as for example, claim 9 in US Patent No. 4,120,384 to Choy, claim 1 in US Patent No. 5,441,285 to Russell, Jr. et al. and claim 5 in US Patent No. 5,961,133 to Perry. And in regard to the latter patent, there is recited a comparison of a structural feature on the inventive cart with similar structural features on "conventional shopping carts".

Surely, it cannot be that the US Patent and Trademark Office has issued over 20,000 invalid patents – that is, patents that are invalid because they contain claims that recite "conventional" structure and are therefore indefinite. Put another way, it is difficult to accept the fact that 20,000 Examiners erred in issuing patents with indefinite claims because the claims contain recitations that include the word "conventional".

As stated by applicants previously, there appears to be no reasonable justification for the rejection of the claims in the present application that recite "conventional" structure, as being indefinite under 35 USC 112, second paragraph, while over 20,000 other applications previously examined by the US PTO have passed the test of 35 USC 112, second paragraph, and have been issued, even though they too contained claims reciting "conventional" structures – including the three US patents identified above to Choy, Russell, Jr. et al., and Perry which specifically pertain to shopping carts.

For all the foregoing reasons, withdrawal of the rejection of claims 15-21 and 23 is respectfully solicited.

Claims 1-14 were also rejected under 35 USC 102(b) as being anticipated by the US patent to Davidson (USP 5,507,507), which, according to the Examiner teaches "...a shopping cart (10) including a wheeled base (rails 22, 24 and casters 14), a container (18B) supported by the base, a gate (58) pivotably supported (see Figure 5) on a horizontal support rod located at the rear of the container, a pedestal (36) formed on the base for supporting a container thereon, the pedestal being secured to the base at a location between the forward and rearward ends of the base, the container being supported on the rear of the table portion pedestal so that the rear of the container is disposed forwardly of the rear of the base".

The Examiner further urged that Figure 2 of Davidson showed the cart pedestal having a slight inclination with the front of the pedestal being higher than the rear, a handle member 66 located a substantial distance upward from the basket 18b that is part of the container, two rods 26 connecting to a forward attachment of the handle and to the pedestal, and two rods 32 for connecting a rearward attachment of the handle to the base. Further according to the Examiner, Davidson teaches two hinge rods 62 for pivoting of a rear gate, and a child seat (shown in Figure 6) that can be attached to the rear of the basket.

Applicants respectfully solicit reconsideration and withdrawal of this rejection for the following reasons.

Applicants agree that Davidson does, indeed, show a shopping cart bearing several baskets attached to a wheeled base. However, the similarities end there as there are many differences between the Davidson cart and the applicants' cart.

For one thing, claim 1 calls for "a gate member attached to a handle assembly mounted to said base rearwardly of said container and functionally arranged therewith to act as a closure for the rear of the container". In the Davidson patent, the gate member is mounted to the basket 18, and pivoting of the rear wall is accomplished relative to the basket itself, not relative to the base, since the rear wall is not attached to the base.

For another thing, claim 1 requires that the container (ie, the basket) be secured on the pedestal at a fixed location. In the Davidson patent, the container is not secured to the pedestal, and certainly not in or at a fixed location.

Applicants' claim 2 speaks of hanging the container/basket from the handle member at a lowered location relative to the upper part of the handle member such that "said cart possesses a lowered center of gravity". The Examiner never addresses this aspect of applicants' invention. The shopping cart of Davidson is not a cart with a lowered center of gravity – the (tip-over) stability of the cart is compromised by the inclusion of the handle member 34 positioned at a height to accommodate an upper basket 18a positioned atop the lower basket 18b.

In the Davidson cart, there are no hinge rods attached to the handle member 66 from which rear gates for the baskets can be pivotably supported. In the Davidson cart, the space between the lower basket and the wheeled base is not of a size that effectively eliminates the storage or placement of articles on the wheeled base.

The Examiner asserts that the pedestal is shown in Figure 2 of Davidson "with a slight inclination where the front of the pedestal is placed higher than the rear". Nothing in the Davidson disclosure speaks about or suggests that the front of the pedestal is higher than the rear of the pedestal. If there is any suggestion of the pedestal having a higher front than rear, it most probably results from the three-dimensional depiction of the structure, which as shown in Figure 2 is somewhat distorted. For example, Figure 2 seems to show that the front of the top basket 18a is located adjacent and aligned with the rear of the lower basket 18b. Yet, Figure 5 shows that this is not so – the front of the upper basket is positioned over the longitudinal mid-way point of the lower basket.

With respect to claim 11, the Examiner states "Davidson, teaches of two hinge rods (62) for pivoting of a rear gate; Figure 5. This is not the case – claim 11 recites "a pair of vertically spaced apart hinge rods, a first one of said hinge rods being located in the vicinity of the upper end of said handle member and being disposed on said handle member at a first height, and the other of said hinge rods being disposed said first one of said hinge rods, said lower hinge rod pivotably securing the rear gate of said basket", and Davidson fails to disclose or teach vertically spaced apart hinge rods, a first one of the rods being disposed on the handle member, or a lower hinge rod pivotably securing the rear gate of the basket.

Claims 13 and 14 recite a pivoting child seat at the rear of the basket disposed at a height substantially below the height of the upper end of the handle member. The child

seat of Davidson is secured to the basket adjacent the handle member, and NOT at a height substantially below the height of the upper end of the handle member.

Claims 15-21 and 23 have been rejected under 35 USC 103(a) as being unpatentable over Davidson. Applicants urge withdrawal of this rejection as it is improper for the reasons that follow.

The Examiner states that "Davidson discloses the claimed invention, as disclosed except for specifically stating if the space between the pedestal and base has been minimized to effectively eliminate the storage of merchandise. Davidson shows, in Figures 1 and 2 that the space is minimized to the extent that medium to large items cannot be stored in the space. It would have been obvious to one having ordinary skill in the art at the time of invention to reduce the size to effectively eliminate the storage of merchandise to allow large merchandise to be stored in the space between the upper containers."

Davidson fails to disclose or teach "a pedestal being mounted to said base at a location between the forward and rearward ends of said base and at a height relative to said base such that the space between the pedestal and the base is minimized to such an extent that its use as storage for merchandise has effectively been eliminated".

The Examiner further urges that the upper hinge rod 62 in Davidson lies nearly in substantially the same plane as the handle and forms a pivot connection for the rear gate, and then concludes, without any teaching of the same from any reference, that it would have been obvious to connect the pair of horizontal rods that form the hinge 62 to the spine 26.

This conclusion of the Examiner is without any support whatsoever, and is clearly reached only after reading the applicants' disclosure. An examination of the Davidson patent will reveal that the so-called hinge rods 62 for the pivoting gate are integral parts of the baskets 18a and/or 18b, not the handle member 66. There is no teaching in Davidson that would suggest to a person of ordinary skill in this art to dispose the hinge rods such that they extend between and are connected substantially normal to the spine members (note claims 15 and 16).

For all the foregoing reasons, applicants respectfully urge that the rejections of the claims in this application either under 35 USC 102(b) as being anticipated by Davidson or under 35 USC 103(a) as being unpatentable over Davidson are improper and ought to be withdrawn. Further,

in view of the amendments proposed hereinabove, all other objections and rejections have been obviated, and it is the position of applicants that these claims should be re-evaluated and found to be in compliance with the requirements of 35 USC 112, first and second paragraphs, and to satisfy the requirements of 35 USC 102 and 103.

Whereby applicants solicit allowance of the claims now in this application.

Respectfully submitted on behalf of applicants,

 
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